

**§ 124.1024 Appeals of disadvantaged status determinations.**

(a) *Who may appeal.* Appeals of protest determinations may be filed with the SBA's DADA/GC&MED by the protested concern, the protestor, or the contracting officer.

(b) *Timeliness of appeal.* An appeal must be in writing and must be received by the DADA/GC&MED no later than 5 working days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the five-day time period.

(c) *Notice of appeal.* Notice of the appeal must be provided by the party bringing an appeal to the procuring activity contracting officer and either the protested concern or original protestor, as appropriate.

(d) *Grounds for appeal.* SBA will reexamine a protest determination only if there was a clear and significant error in the processing of the protest, or if the AA/SDBCE, or designee, failed to consider a significant material fact contained within the information supplied by the protestor or the protested concern. SBA will not consider protest determination appeals based on additional information or changed circumstances which were not disclosed at the time of the decision of the AA/SDBCE or designee, or which are based on disagreement with the findings and conclusions contained in the determination.

(e) *Contents of appeal.* No specific format is required for the appeal. However, the appeal must identify the protest determination which is appealed, and set forth a full and specific statement as to why the determination is erroneous under paragraph (c) of this section.

(f) *Completion of appeal after award.* An appeal may proceed to completion even though an award of the SDB acquisition or other procurement requirement which prompted the protest has been made, if so desired by the protested concern, or where SBA determines that a decision on appeal would have a material impact on contracting decisions, such as where the contracting officer agrees:

(1) In the case where an award is made to a concern other than the protested concern, to terminate the con-

tract and award to the protested concern if the appeal finds that the protested concern is disadvantaged; or

(2) In the case where an award is made to the protested concern, to terminate the contract if the appeal finds that the protested concern is not disadvantaged.

(g) The appeal will be decided by the DADA/GC&MED, within 5 working days of its receipt, if practicable.

(h) The appeal decision will be based only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protestor, and the protested concern, consistent with law.

(i) The decision of the DADA/GC&MED, is the final decision of the SBA, and cannot be further appealed to OHA.

**PART 125—GOVERNMENT CONTRACTING PROGRAMS**

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- 125.29 What penalties may be imposed under this part?

AUTHORITY: 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644 and 657(f).

SOURCE: 61 FR 3312, Jan. 31, 1996, unless otherwise noted.

### § 125.1 Programs included.

The regulations in this part relate to the Government contracting assistance programs of SBA. There are five main programs: Prime contracting assistance; Subcontracting assistance; Government property sales assistance; the Certificate of Competency program; and Service-Disabled Veteran-Owned Small Business Concern contracting assistance. The objective of the programs is to assist small businesses in obtaining a fair share of Federal Gov-

ernment contracts, subcontracts, and property sales.

[61 FR 3312, Jan. 31, 1996, as amended at 69 FR 25266, May 5, 2004]

### § 125.2 Prime contracting assistance.

(a) *General.* Small business concerns must receive any award or contract, or any contract for the sale of Government property, that SBA and the procuring or disposal agency determine to be in the interest of:

- (1) Maintaining or mobilizing the Nation's full productive capacity;
- (2) War or national defense programs;
- (3) Assuring that a fair proportion of the total purchases and contracts for property, services and construction for the Government in each industry category are placed with small business concerns; or

(4) Assuring that a fair proportion of the total sales of Government property is made to small business concerns.

(b) *Responsibilities in the acquisition planning process.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs are responsible for reviewing all acquisitions not set-aside for small businesses to determine whether a set-aside is appropriate and to identify alternative strategies to maximize the participation of small businesses in the procurement.

(2) As early in the acquisition planning process as practicable, but no later than 30 days before the issuance of a solicitation, or prior to placing an order without a solicitation, the procuring activity must coordinate with the procuring activity's Small Business Specialist (SBS) when the acquisition strategy contemplates an acquisition meeting the dollar amounts in paragraph (b)(2)(i) of this section, unless the contract or order is entirely reserved or set-aside for small business concerns as authorized under the Small Business Act. The SBS must notify the agency Office of Small and Disadvantaged Business Utilization (OSDBU) if the strategy or plan includes bundled requirements that the agency has not identified as bundled or includes unnecessary or unjustified bundling of requirements. If the strategy involves